

BOMBAY ACT NO. XXIX OF 1950.¹

[THE BOMBAY PUBLIC TRUSTS ACT, 1950.]

[14th August 1950]

Amended by Bom. 47 of 1950.

" " " 14 of 1951.
 " " " 39 of 1951.
 " " " 28 of 1953.
 " " " 21 of 1954.
 " " " 59 of 1954.

An Act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay.

WHEREAS it is expedient to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay; It is hereby enacted as follows:—

CHAPTER I.**PRELIMINARY.**

1. (1) This Act may be called the Bombay Public Trusts Act, 1950.

Short title,
extent,
operation and
application.

(2) It shall extend to the whole of the State of Bombay.

(3) This Act shall come into force at once; but the provisions thereof shall apply to a public trust or any class of public trusts on the date specified in the notification under sub-section (4).

(4) The State Government may, by notification in the *Official Gazette* specify the date on which the provisions of this Act shall apply to any public trust or any class of public trusts:

Provided that the State Government may also by a like notification direct that from the date specified therein any public trust or class of public trusts shall be exempt from the provisions of this Act:

Provided further that before a notification of such application or exemption is published, a draft thereof shall be published in the *Official Gazette* and in such other manner as may be prescribed for the information of persons likely to be affected thereby together with a notice specifying the date on or before which any objections or suggestions shall be received and the date on or after which the draft shall be taken into consideration.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "assessor" means a person appointed as an assessor under section 7;

(2) "Assistant Charity Commissioner" means an Assistant Charity Commissioner appointed under section 5;

(3) "Charity Commissioner" means the Charity Commissioner appointed under section 3;

(4) "Court" means in the Greater Bombay, the City Civil Court and elsewhere, the District Court;

(5) "Deputy Charity Commissioner" means the Deputy Charity Commissioner appointed under section 5;

(6) "Hindu" includes Jain, Buddhist and Sikh;

¹ For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1949, Part V, pp. 235-239.

(7) "Inspector" means an Inspector appointed under section 6;

(8) "manager" means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes—

(a) in the case of a math, the head of such math,

(b) in the case of a wakf, a mutavalli of such wakf,

(c) in the case of a society registered under the Societies Registration Act, 1860, its governing body, if the property of the society is not vested in a trustee;

(9) "math" means an institution for the promotion of the Hindu religion presided over by a person whose duty it is to engage himself in imparting religious instructions or rendering spiritual service to a body of disciples or who exercises or claims to exercise headship over such a body and includes places of religious worship or instruction which are appurtenant to the institution;

(10) "person having interest" [includes]—

(a) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

(c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,

(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust, any beneficiary;

of
1860.

(11) "prescribed" means prescribed by rules;

(12) "public securities" means—

(a) securities of the Central Government or any State Government,

(b) stocks, debentures or shares in Railway or other companies, the interest or dividend on which has been guaranteed by the Central or any State Government,

(c) debentures or other securities for money issued by or on behalf of any local authority in exercise of the powers conferred by an Act of the Central or State Legislature;

(d) a security expressly authorised by an order which the State Government makes in this behalf;

(13) "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, ²[a dharmada] or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860;

XXI
of
1860.

¹ This word was substituted for the word "means" by Bom. 28 of 1953, s. 2.

² These words were inserted by Bom. 14 of 1951, s. 2.

(v) the gross average annual income of the trust property estimated on the income of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter,

(vi) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause (v) relate,

(vii) the address to which any communication to the trustee or manager in connection with the public trust may be sent,

(viii) such other particulars which may be prescribed :

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(6) Every application made under sub-section (1) shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf. It shall be accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

19. On the receipt of an application under section 18, or upon an application made by any person having interest in a public trust or on his own motion, the Deputy or Assistant Charity Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining :—

^{Inquiry for registration.}
[(i) whether a trust exists and whether such trust is a public trust],

(ii) whether any property is the property of such trust,

(iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction,

(iv) the names and addresses of the trustees and manager of such trust,

(v) the mode of succession to the office of the trustee of such trust,

(vi) the origin, nature and object of such trust,

(vii) the amount of gross average annual income and expenditure of such trust, and

(viii) any other particulars as may be prescribed under sub-section (5) of section 18.

20. On completion of the inquiry provided for under section 19, the Deputy or Assistant Charity Commissioner shall record his findings with the reasons therefor as to the matters mentioned in the said section, ^{Deputy or Assistant Charity Commissioners.} ^{2[and may make an order for the payment of the registration fee].}

21. (1) The Deputy or Assistant Charity Commissioner shall make entries in the register kept under section 17 in accordance with the findings recorded by him under section 20 or if appeals ^{Entries in register.} ^{3[or applications]} are made as provided by this Act, in accordance with the final decision of the competent authority provided by this Act.

(2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under the following provisions, be final and conclusive.

22. (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

¹ This clause was substituted for the original by Bom. 14 of 1951, s. 6.

² These words were added by Bom. 28 of 1953, s. 3.

³ These words were inserted by Bom. 14 of 1951, s. 7.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, he shall record a finding with the reasons therefor to that effect. Such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend the entries in the said register in accordance with such finding and if appeals [or applications] were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made shall, subject to any further amendment on the occurrence of a change, be final and conclusive.

Further inquiry by Deputy or Assistant Charity Commissioner.

²[22A. If at any time after the entries are made in the register under section 21 or 22 it appears to the Deputy or Assistant Charity Commissioner that any particular relating to any public trust, which was not the subject-matter of the inquiry under section 19, or sub-section (3) of section 22, as the case may be, has remained to be enquired into, the Deputy or Assistant Charity Commissioner, as the case may be, may make further inquiry in the prescribed manner, record his findings and make entries in the register in accordance with the decision arrived at or if appeals or applications are made as provided by this Act, in accordance with the decision of the competent authority provided by this Act. The provisions of sections 19, 20, 21 and 22 shall, so far as may be, apply to the inquiry, the recording of findings and the making of entries in the register under this section].

Procedure where trust property is situate in several regions or sub-regions.

23. If any part of the property of any public trust is situate within the limits of more than one region or sub-region, the Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which the public trust is registered, shall forward a copy of the entries to the Deputy or Assistant Charity Commissioner in charge of the region or sub-region within the limits of which such part of the trust property is situate. The Deputy or Assistant Charity Commissioner in charge of such region or sub-region shall make an entry in such book as may be prescribed for the purpose. A copy of such entry shall also be sent by the Deputy or the Assistant Charity Commissioner, as the may be, to the Sub-Registrar appointed under the Indian Registration Act, 1908, of the ^{XVI} of sub-district within the limits of which such property or part thereof is situate. 1908.

Stay of inquiry.

24. No Deputy or Assistant Charity Commissioner shall proceed with an inquiry under section 19 or 22 in regard to any public trust which has been already registered in any other region or sub-region.

Inquiry regarding public trust not to be held by more than one Deputy or Assistant Charity Commissioner.

25. (1) If an inquiry under section 19 or 22 in regard to any public trust is pending before more than one Charity Commissioner whether Deputy or Assistant, the Charity Commissioner shall, on the application of any of the persons having interest in such public trust or of any Deputy or Assistant Charity Commissioner before whom such inquiry is pending or on his own motion, determine which of such Deputy or Assistant Charity Commissioner shall proceed with the inquiry in regard to such trust.

¹ These words were inserted by Bom. 14 of 1951, s. 7.

² This section was inserted by Bom. 59 of 1954, s. 2.

(4) Notwithstanding anything contained in the preceding sub-sections,—

¹[(a)] the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary. The provisions of sub-sections (2) and (3) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit; ²[and

(b) the State Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-section (2), subject to such conditions as may be specified in the order.]

34. (1) It shall be the duty of every auditor auditing the accounts of a public Auditor's trust under section 33 to prepare a balance sheet and income and expenditure account and to forward a copy of the same to the Deputy or Assistant Charity Commissioner of the region or sub-region or to the Charity Commissioner, if the Charity Commissioner requires him to do so.

(2) The auditor shall in his report specify all cases of irregular, illegal or improper expenditure, or failure or omission to recover moneys or other property belonging to the public trust or of loss or waste of money or other property thereof and state whether such expenditure, failure, omission, loss or waste was caused in consequence of a breach of trust, or misapplication or any other misconduct on the part of the trustees, or any other person.

35. ³[(1)] Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee of public trust shall be bound ⁴[(notwithstanding any direction contained in the instrument of the trust) to deposit the money in any Scheduled Bank as defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a co-operative bank approved by the State Government for the purpose or to invest it in public securities]:

Provided that such money may be invested in the first mortgage of immovable property situate in a Part A State or a Part C State if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money:

Provided further that the Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner.

⁵[(2) Nothing in sub-section (1) shall affect any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act, 1954, in accordance with a direction contained in the instrument of the trust: 1954.

Provided that any interest or dividend received or accruing from such investment or deposit on or after the coming into force of the said Act or any sum realized on the maturity of the said investment or deposit shall be applied or invested in the manner prescribed in sub-section (1).]

¹ The brackets and letter "(a)" were inserted by Bom. 28 of 1953, s. 4 (2).

² This word and clause (b) were added, *ibid.*

³ This section was renumbered as sub-section (1) of that section by Bom. 59 of 1954, s. 3 (1).

⁴ This portion was substituted for the original, *ibid.*

⁵This sub-section was inserted, *ibid.*, s. 3 (2).

Alienation
of immovable
property of
public trust.

36. Subject to the directions in the instrument of trust—

(a) no sale, mortgage, exchange or gift of any immovable property, and

(b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building,

belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner.

CHAPTER VI.

CONTROL.

Power of
inspection
and super-
vision.

37. The Charity Commissioner, the Deputy or Assistant Charity Commissioner or any officer authorised by the State Government by a general or special order shall have power—

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust and any book or account in the possession of or under the control of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust:

Provided that in entering upon any property belonging to the public trust the officers making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust.

Explanation
on report of
auditor.

38. On receipt of a report of the auditor under section 34¹ [or of a report, if any, made by an officer authorized under section 37] the Deputy or Assistant Charity Commissioner to whom the report is submitted shall require the trustee or any other person concerned to submit an explanation thereon within such period as he thinks fit.

Report to
Charity
Commis-
sioner.

39. If on the consideration² [of any report referred to in section 38], the accounts and explanation, if any, furnished by the trustees or any other person, the Deputy or Assistant Charity Commissioner is, after holding an inquiry in the prescribed manner, satisfied that the trustees or any other person has been guilty of gross negligence, a breach of trust, misapplication or misconduct which has resulted in the loss to the public trust, he shall report the matter to the Charity Commissioner.

Decision of
Charity
Commis-
sioner on
report under
section 39.

40. The Charity Commissioner shall, after considering the report of the Deputy or Assistant Charity Commissioner, giving an opportunity to the person concerned and holding such inquiry as he thinks fit, determine—

(a) the amount of loss caused to a public trust;

(b) whether such loss was due to any breach of trust, misapplication or misconduct on the part of any person;

¹ These words and figures were inserted by Bom. 28 of 1953, s. 5.

² These words and figures were substituted for the words "of the report of the auditor", *ibid.*, s. 6.

(c) whether any of the trustees, or any other person was responsible for such loss:

(d) the amount which any of the trustees or any other person is liable to pay to the public trust for such loss.

41. (1) If the Charity Commissioner decides that any person is liable to pay to the public trust any amount for the loss caused to the trust, the Charity Commissioner may direct that the amount shall be surcharged on the person.

(2) Subject to the provisions of section 72, the order of the Charity Commissioner under sub-section (1) shall be final and conclusive.

CHAPTER VII.

OTHER FUNCTIONS AND POWERS OF CHARITY COMMISSIONER.

42. The Charity Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name.

Charity
Commissioner
to be
corporation
sole.

VI of 1890. 43. Notwithstanding anything contained in the Charitable Endowments Act, 1890, the Charity Commissioner shall be deemed to be and to have always been the Treasurer of Charitable Endowments for the State of Bombay appointed under the provisions of the said Act, and the property vesting in the said Treasurer before the date on which this Act comes into force shall be deemed to vest in the Charity Commissioner as the Treasurer of Charitable Endowments; and the provision of the said Act shall apply to the Charity Commissioner, as the Treasurer of Charitable Endowments appointed under the said Act.

44. (1) Subject to the provisions of this Act [and] the rules made thereunder the Charity Commissioner may be appointed to act as a trustee of a public trust by a Court of competent jurisdiction or by the author of the trust.

Charity
Commissioner
can act as
trustee of
public trusts.

(2) Save as herein provided, the Charity Commissioner acting as a trustee of a public trust shall have the same powers, duties and liabilities, and be entitled to the same rights and privileges as any other trustee of a public trust.

(3) The Charity Commissioner may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Charity Commissioner shall be the sole trustee and it shall not be lawful to appoint him as a trustee along with other persons.

45. (1) Any person intending to create a public trust may by the instrument creating the trust and with the consent of the Charity Commissioner appoint him by that name or any other description to be the trustee of such trust:

Charity
Commissioner
may
with consent
be appointed
trustee of
settlement
by grantor.

Provided that the consent of the Charity Commissioner shall be recited in the said instrument and that such instrument shall be executed by the Charity Commissioner or any officer duly authorised by him in that behalf.

¹ This word was substituted for the word "or" by Bom. 14 of 1951, s. 11.

(2) Upon such appointment the trust property shall vest in the Charity Commissioner and shall be held by him upon the terms declared in such instrument.

Appointment of Charity Commissioner as trustee under will. 46. Where the Charity Commissioner by that name or any other sufficient description has been appointed a trustee of any public trust under any will, the executor of the will of the testator or the administrator of his estate shall ¹[within a period of three months from the date of] obtaining probate or letters of administration, notify in the prescribed manner, the contents of such will to the Charity Commissioner and if the Charity Commissioner consent to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Charity Commissioner, such property shall vest in the Charity Commissioner and shall be held by him upon the trust expressed in the will :

Provided that the consent of the Charity Commissioner shall be recited in the instrument and that such instrument shall be executed by the Charity Commissioner or any officer duly authorised by him in that behalf :

²[Provided further that where, under any law for the time being in force, no probate or letters of administration are necessary for the administration of the estate of the testator, the executor or administrator, as the case may be, shall notify the contents of the will within the period of three months from the time when contents of the will became known to him.]

Power of Court to appoint new trustee or trustees, as the case may be.

47. (1) Any person interested in a public trust or the Charity Commissioner may apply to the Court for the appointment of a new trustee, when a trustee of such trust—

(a) disclaims or dies ;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or Deputy or Assistant Charity Commissioner or the Officer authorised by the State Government in this behalf ;

(c) leaves India for the purpose of residing abroad ;

(d) is declared an insolvent ;

(e) desires to be discharged from the trust ;

(f) refuses to act as a trustee ;

(g) becomes in the opinion of the Court unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the trust ; or

(h) in any of the cases mentioned in Chapter III is not available to administer the trust.

¹ These words were substituted for the word "after" by Bom. 14 of 1951, s. 12 (i).

² This proviso was added, *ibid.*, s. 12 (ii).

(2) No such application shall be entertained,—

(a) unless the trustee who on account of any of the reasons mentioned in clauses (a) to (h) of sub-section (1) is not fit or available to administer the trust is the sole trustee or unless by the vacation of office by one or more trustees on account of any of the said reasons the minimum number of trustees required by the instrument, scheme, order or decree of the Court or usage or custom of the trust for the administration of the trust is reduced;

(b) (i) until the expiration of a period of three months from the date on which the trustee is not so fit or available to administer the trust; and

(ii) if a new trustee has been appointed in the said office during the said period in accordance with the instrument, scheme, order or decree of the Court, or usage or custom of the trust.

(3) The Court after making an inquiry ¹[may by order appoint] the Charity Commissioner or any other person as the trustee to fill up the vacancy.

(4) In appointing the trustee under sub-section (3) the Court shall have regard—

(a) to the wishes of the author of the trust;

(b) to the wishes of the person, if any, empowered to appoint a new trustee;

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust.

(5) Where the Charity Commissioner is appointed a trustee, he shall be the sole trustee.

(6) The ²[order] of the Court under sub-section (3) shall be deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court.

³[47A. It shall be lawful for the Court upon making any order appointing a new trustee under sub-section (3) of section 47, either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed.]

⁴[47B. Nothing in section 44 or 47—

(a) shall empower any Court to appoint the Charity Commissioner to be a trustee of any public trust for a religious purpose, or

(b) shall entitle the Charity Commissioner to accept any trust, if such acceptance requires the Charity Commissioner to manage the affairs of any religious denomination or any section thereof in the matter of religion :

Provided that if the author of the public trust for a religious purpose so intends, or the person or the authority in whom or which the property of such public trust vests deems it expedient in public interest, the Court may appoint the Charity Commissioner the sole trustee of such public trust or the Charity Commissioner may accept such trust.]

48. (1) When the Charity Commissioner is appointed a trustee of any public trust, there shall be levied such administrative charges whether by way of percentage or otherwise, as the State Government may prescribe.

¹ These words were substituted for the words "may appoint" by Bom. 28 of 1953, s. 7 (1).

² This word was substituted for the word "decision", *ibid.*, s. 7 (2).

³ Section 47A was inserted, *ibid.*, s. 8.

⁴ Section 47B was inserted by Bom. 59 of 1954, s. 4.

(2) The charges so levied may be at different rates for different properties or classes of properties or for different duties.

49. (1) Nothing in this Act shall be deemed to prevent the transfer, by the Charity Commissioner, of any property vested in him as a trustee, to—

- (a) the original trustee (if any),
- (b) any other lawfully appointed trustee, or
- (c) any other person, if the court so directs.

(2) Upon such transfer, such property shall vest in such trustee and shall be held by him upon the same terms as those upon which it was held prior to the transfer and the Charity Commissioner shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that in the case of any transfer under this section, the Charity Commissioner shall be entitled to retain out of the property any fees and administrative charges leviable in accordance with the provisions of this Act.

Suits relating to public trusts.

50. In any case—

- (i) where it is alleged that there is a breach of a public trust,
- (ii) where a declaration is necessary that a particular property is a property belonging to a public trust or where a direction is required to recover the possession of such property from any person including a person holding adversely to the public trust, or
- (iii) where the direction of the court is deemed necessary for the administration of any public trust,

the Charity Commissioner or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in section 51, may institute a suit whether contentious or not in the court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following reliefs:—

- (a) an order for the recovery of the possession of such property,
- (b) the removal of any trustee or manager,
- (c) the appointment of a new trustee or manager,
- ¹[(cc) vesting any property in a trustee]
- (d) a direction for taking accounts and making certain inquiries,
- (e) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,
- (f) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged,
- (g) the settlement of a scheme or variations or alterations in a scheme already settled, or
- (h) granting such further or other relief as the nature of the case may require:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof.

Consent of Charity Commissioner for institution of suit.

51. (1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. The Charity Commissioner, after hearing the parties and after making such inquiry as he thinks fit, may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1) the persons applying for such consent may file an appeal to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1939, in the manner provided by this Act.

Bom.
XII of
1939.

¹ Clause (cc) was inserted by Bom. 28 of 1953, s. 9.

(3) In every suit filed by persons having interest in any trust under section 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the Bombay Revenue Tribunal in appeal under section 71, the decision of the Charity Commissioner under sub-section (1) shall be final and conclusive.

V of
1908.

52. ¹[(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the provisions of sections 92 and 93 of the said Code shall not apply to the public trusts : Non-application of sections 92 and 93 of Civil Procedure Code to public trusts.

²[(2) If] on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before ⁴[any Civil Court of competent jurisdiction] to which the Advocate General or the Collector exercising the powers of the Advocate General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court.]

⁵[(3) Any reference to the Advocate General made in any instrument, scheme, order or decree of any Civil Court of competent jurisdiction made or passed, whether before or after the said date, shall be construed as a reference to the Charity Commissioner.]

53. (1) Where under any will a bequest has been made in favour of a public trust or where such bequest itself creates a public trust, it shall be the duty of the executor under the will to forward a copy thereof to the Deputy or Assistant Charity Commissioner for the region or sub-region where ⁶[such trust] may have been, or is required to be, registered. Bequest under will for benefit of public trust.

(2) No probate of any such will or letters of administration with such will annexed shall be granted by any Court whatsoever unless it is satisfied that a copy of such will has been forwarded to the Deputy or Assistant Charity Commissioner as provided by sub-section (1).

54. (1) Where according to the custom or usage of any business or trade or Dharmada, the agreement between the parties relating to any transaction any amount is charged to any party to the said transaction or collected under whatever name, as being intended to be used for a charitable or religious purpose the amount so charged or collected ⁷[(in this Act called—“ dharmada ”)] shall vest in the person charging or collecting the same as a trustee.

(2) Any person charging or collecting such sums shall within three months from the expiration of the year for which his accounts are ordinarily kept submit an account in such form as may be prescribed to the Deputy or Assistant Charity Commissioner.

(3) The Deputy or Assistant Charity Commissioner shall have power to make such inquiry as he thinks fit to verify the correctness of the account submitted and may pass order for the disposal of the amount in the manner prescribed.

⁸[(4) The provisions of Chapter IV shall not apply to dharmada.]

¹ Section 52 was re-numbered as sub-section (1) of that section by Bom. 28 of 1953, s. 10 (1).

² This portion was added by Bom. 14 of 1951, s. 13.

³ The brackets, figure and word “(2)” were substituted for the words “Provided that if” by Bom. 28 of 1953, s. 10 (1).

⁴ These words were substituted for the words “any Court including the High Court”, *ibid.*, s. 10 (2).

⁵ Sub-section (3) was inserted, *ibid.*, s. 10 (3).

⁶ These words were substituted for the words “such will”, *ibid.*, s. 11.

⁷ These brackets and words were inserted by Bom. 14 of 1951, s. 14 (i).

⁸ Sub-section (4) was added, *ibid.*, s. 14 (ii).

Cypres.

55. (1) ¹[If upon an application made to him or otherwise] the Charity Commissioner is of opinion that—

- (a) the original object for which the public trust was created has failed,
- (b) the income or any surplus balance of any public trust has not been utilized or is not likely to be utilized,
- (c) ²[in the case of a public trust other than a trust for a religious purpose, it is not in public interest] expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object,
- (d) in any of the cases mentioned in sections 10 to 13 or in regard to the appropriation of the dharmada sums held in trust under section 54 the directions of the court are necessary,

the Charity Commissioner shall ³[require the trustees to apply within the prescribed time for directions to the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate].

(2) If the trustees fail to make the application as required under sub-section (1) or if the Charity Commissioner himself is a trustee or if there is no trustee of the public trust, the Charity Commissioner shall make an application to the court.

Court's power to hear application. 56. (1) On such application being made, the court after hearing the parties and making an inquiry shall decide the matter and shall give directions. In giving the directions, the court shall, so far as may be expedient, practicable, desirable ⁴[, necessary or proper] in public interest, give effect to the original intention of the author of the public trust or the object for which the public trust was created. If the Court is of opinion that the carrying out of such intention or object is not wholly or partially expedient, practicable, desirable ⁴[, necessary or proper] in public interest, the court may direct the property or income of the public trust or any portion thereof to be applied *cypres* to any other charitable or religious object. In doing so, it shall be lawful for the court to alter any scheme already settled or to vary the terms of any decree or order already passed in respect of the public trust or the conditions contained in the instrument of the public trust.

(2) Any decision or order passed by the court under sub-section (1) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

Powers of trustee to apply for directions.

⁵[56A. (1) Save as hereinbefore provided in this Act, any trustee of a public trust may apply to the Court, within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property or income thereof, and the Court shall give its opinion, advice, or direction, as the case may be, thereon :

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

¹ These words were substituted for the words "If at any time" by Bom. 28 of 1953, s. 12 (i).

² These words were substituted for the words "it is not in public interest" by Bom. 59 of 1954, s. 5.

³ These words were substituted for the words "give notice in writing to the trustees to apply to the Court within the time prescribed for directions" by Bom. 28 of 1953, s. 12 (ii).

⁴ These words were substituted for the words "or necessary" by Bom. 59 of 1954, s. 6.

⁵ Sections 56A and 56B were inserted by Bom. 28 of 1953, s. 13.

(g) power to sanction a sale, mortgage, exchange, gift or lease of immovable property belonging to a public trust under section 36;

(h) power to enter on and inspect any trust property, to call for and inspect any proceedings of a trustee, and to call for any return, statement, account or report from trustees or any person connected with a public trust under section 37;

(i) power to hold an inquiry in regard to any loss caused to a public trust under section 40, and to order a surcharge under section 41;

VI of
1890.

(j) power to act as the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890, under section 43;

(k) power to act as a trustee of a public trust;

(l) power to file a suit under section 50;

(m) power to give or refuse consent to the institution of a suit under section 51;

(n) power to give notice to trustees for the *cypres* application of the trust money and to make an application to the court under section 55;

(o) power to publish the lists of assessors under section 62;

(p) to exercise such other powers and perform such other duties and functions as may be prescribed.

70. (1) An appeal ¹[against the finding or order] of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases:—

Appeals from
findings of
Deputy or
Assistant
Charity
Commissioner.

(a) the finding ²[and order, if any,] under section 20;

(b) the finding under section 22;

³[(b-1) the finding under section 22A;]

(c) the finding under section 28;

(d) the order under sub-section (3) of section 54.

(2) No appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.

(3) The Charity Commissioner may, after hearing the appellant or any person appearing on his behalf, for reasons to be recorded in writing either annul, reverse, modify or confirm the finding or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence.

¹ These words were substituted for the words "against the finding" by Bom. 28 of 1953, s. 15 (i).

² These words were inserted, *ibid.*, s. 15 (ii).

³ Clause (b-1) was inserted by Bom. 59 of 1954, s. 7.

Charity
Commissioner
to call for
and examine
record and
proceedings
before
Deputy or
Assistant
Charity
Commiss-
sioner.

¹[70A. (1) The Charity Commissioner may in any of the cases mentioned in section 70, call for and examine the record and proceedings of such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence :

Provided that the Charity Commissioner shall not record or pass any order without giving the party affected thereby an opportunity of being heard.

(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case,—

(a) during the period in which an appeal under section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or

(b) in which an order has been passed either in an appeal made under section 70 or 71 or on an application under section 72.]

Appeal to
Bombay
Revenue
Tribunal.

71. (1) The appeal to the Bombay Revenue Tribunal under sub-section (2) of section 51 against the decision of the Charity Commissioner refusing consent to the institution of the suit shall be filed within sixty days from the date of such decision in such form and shall be accompanied by such fee as may be prescribed.

(2) The Bombay Revenue Tribunal after making such inquiry as it thinks fit may confirm, revoke or modify the decision of the Charity Commissioner.

(3) The decision of the Bombay Revenue Tribunal shall be final and conclusive.

Application
from Charity
Commis-
sioner's
decision
under section
40, 41 or 70,
etc.

72. (1) Any person aggrieved by the decision of the Charity Commissioner under section 40, 41 ²[70 or 70A] on the questions ³[whether a trust exists and whether such trust is a public trust] or whether any property is the property of such trust ^{4*} * * may, within sixty days from the date of the decision, apply to the court to set aside the said decision.

⁵[(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence :

Provided that whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.]

¹ Section 70A was inserted by Bom. 59 of 1954, s. 8.

² The figures, word and letter "70 or 70A" were substituted for the word and figures "or 70" by Bom. 59 of 1954, s. 9 (1).

³ These words were substituted for the words "whether a trust is a public trust" by Bom. 14 of 1951, s. 19 (i).

⁴ The words and figures "under Chapter IV" were deleted, *ibid.*, s. 19 (ii).

⁵ Sub-section (1A) was inserted by Bom. 59 of 1954, s. 9 (2).

(2) The court after taking ¹[evidence, if any,] may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

(3) Pending the disposal of an application under sub-section (2), all proceedings for surcharge shall be stayed if the person aggrieved makes out a *prima facie* case for a stay order.

(4) An appeal shall lie to the High Court against the decision of the court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies.

V of
1908.

73. In holding inquiries under this Act, the officer holding the same shall have Officers holding inquiries to have powers of civil court. the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit—

(a) proof of facts by affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath,

(c) compelling the production of documents,

(d) issuing of commissions.

XLV of
1860.

74. All inquiries and appeals under this Act shall be deemed to be judicial inquiries to be judicial inquiries. within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

IX of
1908.

75. In computing the period of appeal under this Chapter, the provisions of Limitation. sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeals.

V of
1908.

76. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under this Act.

Civil Pro-
cedure Code to
apply to
proceedings
under this
Act.

77. All sums payable under section 18, ²[20], 41, ³[48, 79A, ⁴[79C or 79CC]] or Recovery of sums due under section 18, ⁵[20, 41, 48, 79A, 79C or 79CC] under any rule, if not paid, shall notwithstanding anything contained in any law, be recoverable as an arrear of land revenue.

or rules.

¹ These words were substituted for the words "such evidence as it thinks necessary" by Bom. 59 of 1954, s. 9 (3).

² These figures were inserted by Bom. 28 of 1953, s. 16 (a).

³ These figures, letters and word were substituted for the word and figures "or 48" by Bom. 14 of 1951, s. 20.

⁴ The figures, letters and word "79C or 79CC" were substituted for the word, figures and letter "or 79C" by Bom. 28 of 1953, s. 16 (b).

⁵ These were substituted for the figures, letters and word "41, 48, 79A or 79C," by Bom. 21 of 1954, s. 3, Second Schedule.